

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 465

BY AGRICULTURAL AFFAIRS COMMITTEE

AN ACT

RELATING TO VETERINARIANS; AMENDING SECTION 54-2118, IDAHO CODE, TO REVISE PROVISIONS RELATING TO REMEDIES AND PENALTIES FOR VIOLATION OF THE IDAHO VETERINARY PRACTICE ACT, TO PROVIDE FOR ADMINISTRATIVE ACTIONS, TO PROVIDE FOR FINES, TO PROVIDE FOR CIVIL PENALTIES IN LIEU OF CERTAIN DISCIPLINARY PROCEEDINGS, TO PROVIDE TERMS AND CONDITIONS, TO PROVIDE FOR TREATMENT OF CERTAIN VIOLATIONS AND DOCUMENTS AND RECORDS RELATED TO THOSE VIOLATIONS UPON SUCCESSFUL COMPLETION OF SPECIFIED TERMS AND CONDITIONS, TO PROVIDE FOR SPECIFIED CIVIL COURT PROCEEDINGS, TO PROVIDE FOR CRIMINAL ACTIONS, TO REMOVE REFERENCE TO CERTAIN CIVIL PROCEEDINGS, TO PROVIDE THAT CERTAIN REMEDIES ARE NOT MUTUALLY EXCLUSIVE AND SUCCESSFUL ACTION ON ONE REMEDY DOES NOT PRECLUDE ACTION ON OTHER REMEDIES; AND AMENDING SECTION 9-340C, IDAHO CODE, TO PROVIDE THAT DOCUMENTS AND RECORDS RELATED TO CERTAIN VIOLATIONS SHALL BE EXEMPT FROM DISCLOSURE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-2118, Idaho Code, be, and the same is hereby amended to read as follows:

54-2118. VIOLATIONS OF CHAPTER -- REMEDIES AND PENALTIES. In addition to the disciplinary actions set forth in section 54-2115, Idaho Code:

(1) Administrative actions.

(a) Any person violating the provisions of this chapter, or violating a rule promulgated by the board to implement the provisions of this chapter may be ~~assessed a civil penalty~~ fined by the board or its duly authorized agent ~~of~~ not more than five thousand dollars (\$5,000) for each offense and shall be liable for investigatory expenses and reasonable paralegal and attorney's fees, and provided that each act on each day of violation shall constitute a separate offense. ~~Assessment Imposition of a civil penalty fine~~ may be made in conjunction with any other board administrative action. No ~~civil penalty fine~~ may be assessed unless the person charged was given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act. If ~~the board is unable to collect the civil penalty~~ a person fined fails to fully pay the fine, investigatory expenses or reasonable paralegal and attorney's fees, ~~or if any person fails to pay all of a set portion of the civil penalty as determined by the board, it may recover such amount by action in the appropriate district court. Any person against whom the board has assessed a civil penalty under this section may, within twenty eight (28) days of the final agency action making the assessment, appeal the assessment to the district court of the county in which the board took action.~~

(b) Notwithstanding the provisions of subsection (1)(a) of this section, any person who has violated the recordkeeping or continuing education requirements imposed by this chapter or the rules of the board may, in lieu of disciplinary proceedings under this chapter or the Idaho administrative procedure act, elect to pay the board a civil penalty to be determined by the board, or its authorized agent, in an amount between five hundred dollars (\$500) and one thousand dollars (\$1,000), under the following terms and conditions:

(i) The person must not have been disciplined by the board for any reason within the past five (5) years;

(ii) The person must not have previously elected to pay a penalty under this section;

(iii) The person is not currently on probation by the board;

(iv) The person is not currently under investigation by the board for an offense other than the recordkeeping or continuing education violation; and

(v) The person must fully comply with the board's instructions on remedying the recordkeeping or continuing education violation.

Upon successful completion of the above terms and conditions and payment of the civil penalty, the violation shall not be considered "discipline," shall not be reported to any national disciplinary database, and documents and records related to the violation shall be exempt from disclosure under chapter 3, title 9, Idaho Code.

(2) Civil court proceedings. The board, the attorney general's office, a county prosecuting attorney or any citizen of this state may bring an action in the district court of either Ada county or any county where a violation is occurring, to enjoin any person from practicing veterinary medicine or practicing as a certified veterinary technician, certified euthanasia technician or any agency operating as a certified euthanasia agency without a currently valid, active license, certification, temporary permit or temporary certification. If the court finds that the person is violating the provisions of this chapter, it shall enter an injunction restraining that person from such unlawful acts.

(3) Criminal actions. Any person who practices veterinary medicine, any person practicing as a certified veterinary technician, a certified euthanasia technician or any agency operating as a certified euthanasia agency without a currently valid, active license, certification, temporary permit or temporary certification shall be guilty of a misdemeanor and upon conviction or withheld judgment shall be fined not less than one hundred dollars (\$100), nor more than ten thousand dollars (\$10,000), or incarcerated for no more than one hundred eighty (180) days, or both fined and incarcerated, and provided that each act of such unlawful practice shall constitute a distinct and separate offense.

~~(3) The board, the attorney general's office, any district court or county attorney, or any citizen of this state may bring an action to enjoin any person from practicing veterinary medicine or practicing as a certified veterinary technician, certified euthanasia technician, or any agency operating as a certified euthanasia agency without a currently valid, active license, certification, temporary permit, or temporary certification. If the court finds that the person is violating the provisions of this chapter,~~

~~it shall enter an injunction restraining that individual from such unlawful acts.~~

~~(4) The successful maintenance of an action based on any one (1) of the remedies set forth in this section shall in no way prohibit the prosecution of an are not mutually exclusive and a successful action based on any one (1) remedy does not preclude action on some or all of the other of the remedies.~~

SECTION 2. That Section 9-340C, Idaho Code, be, and the same is hereby amended to read as follows:

9-340C. RECORDS EXEMPT FROM DISCLOSURE -- PERSONNEL RECORDS, PERSONAL INFORMATION, HEALTH RECORDS, PROFESSIONAL DISCIPLINE. The following records are exempt from disclosure:

(1) Except as provided in this subsection, all personnel records of a current or former public official other than the public official's public service or employment history, classification, pay grade and step, longevity, gross salary and salary history, status, workplace and employing agency. All other personnel information relating to a public employee or applicant including, but not limited to, information regarding sex, race, marital status, birth date, home address and telephone number, applications, testing and scoring materials, grievances, correspondence and performance evaluations, shall not be disclosed to the public without the employee's or applicant's written consent. Names of applicants to classified or merit system positions shall not be disclosed to the public without the applicant's written consent. Disclosure of names as part of a background check is permitted. Names of the five (5) final applicants to all other positions shall be available to the public. If such group is less than five (5) finalists, then the entire list of applicants shall be available to the public. A public official or authorized representative may inspect and copy his personnel records, except for material used to screen and test for employment.

(2) Retired employees' and retired public officials' home addresses, home telephone numbers and other financial and nonfinancial membership records; active and inactive member financial and membership records and mortgage portfolio loan documents maintained by the public employee retirement system. Financial statements prepared by retirement system staff, funding agents and custodians concerning the investment of assets of the public employee retirement system of Idaho are not considered confidential under this chapter.

(3) Information and records submitted to the Idaho state lottery for the performance of background investigations of employees, lottery retailers and major procurement contractors; audit records of lottery retailers, vendors and major procurement contractors submitted to or performed by the Idaho state lottery; validation and security tests of the state lottery for lottery games; business records and information submitted pursuant to sections 67-7412(8) and (9) and 67-7421(8) and (9), Idaho Code, and such documents and information obtained and held for the purposes of lottery security and investigative action as determined by lottery rules unless the public interest in disclosure substantially outweighs the private need for protection from public disclosure.

(4) Records of a personal nature as follows:

1 (a) Records of personal debt filed with a public agency or independent
2 public body corporate and politic pursuant to law;

3 (b) Personal bank records compiled by a public depositor for the
4 purpose of public funds transactions conducted pursuant to law;

5 (c) Records of ownership of financial obligations and instruments
6 of a public agency or independent public body corporate and politic,
7 such as bonds, compiled by the public agency or independent public body
8 corporate and politic pursuant to law;

9 (d) Records, with regard to the ownership of, or security interests in,
10 registered public obligations;

11 (e) Vital statistics records; and

12 (f) Military records as described in and pursuant to section 65-301,
13 Idaho Code.

14 (5) Information in an income or other tax return measured by items of
15 income or sales, which is gathered by a public agency for the purpose of
16 administering the tax, except such information to the extent disclosed in
17 a written decision of the tax commission pursuant to a taxpayer protest of
18 a deficiency determination by the tax commission, under the provisions of
19 section 63-3045B, Idaho Code.

20 (6) Records of a personal nature related directly or indirectly
21 to the application for and provision of statutory services rendered to
22 persons applying for public care for the elderly, indigent, or mentally or
23 physically handicapped, or participation in an environmental or a public
24 health study, provided the provisions of this subsection making records
25 exempt from disclosure shall not apply to the extent that such records or
26 information contained in those records are necessary for a background check
27 on an individual that is required by federal law regulating the sale of
28 firearms, guns or ammunition.

29 (7) Employment security information, except that a person may agree,
30 through written, informed consent, to waive the exemption so that a third
31 party may obtain information pertaining to the person, unless access to
32 the information by the person is restricted by subsection (3)(a), (3)(b)
33 or (3)(d) of section 9-342, Idaho Code. Notwithstanding the provisions of
34 section 9-342, Idaho Code, a person may not review identifying information
35 concerning an informant who reported to the department of labor a suspected
36 violation by the person of the employment security law, chapter 13, title 72,
37 Idaho Code, under an assurance of confidentiality. As used in this section
38 and in chapter 13, title 72, Idaho Code, "employment security information"
39 means any information descriptive of an identifiable person or persons that
40 is received by, recorded by, prepared by, furnished to or collected by the
41 department of labor or the industrial commission in the administration of
42 the employment security law.

43 (8) Any personal records, other than names, business addresses and
44 business phone numbers, such as parentage, race, religion, sex, height,
45 weight, tax identification and social security numbers, financial worth or
46 medical condition submitted to any public agency or independent public body
47 corporate and politic pursuant to a statutory requirement for licensing,
48 certification, permit or bonding.

49 (9) Unless otherwise provided by agency rule, information obtained
50 as part of an inquiry into a person's fitness to be granted or retain a

1 license, certificate, permit, privilege, commission or position, private
2 association peer review committee records authorized in title 54, Idaho
3 Code. Any agency which has records exempt from disclosure under the
4 provisions of this subsection shall annually make available a statistical
5 summary of the number and types of matters considered and their disposition.

6 (10) The records, findings, determinations and decisions of any
7 prelitigation screening panel formed under chapters 10 and 23, title 6,
8 Idaho Code.

9 (11) Complaints received by the board of medicine and investigations
10 and informal proceedings, including informal proceedings of any committee
11 of the board of medicine, pursuant to chapter 18, title 54, Idaho Code, and
12 rules adopted thereunder.

13 (12) Records of the department of health and welfare or a public health
14 district that identify a person infected with a reportable disease.

15 (13) Records of hospital care, medical records, including
16 prescriptions, drug orders, records or any other prescription information
17 that specifically identifies an individual patient, prescription records
18 maintained by the board of pharmacy under sections 37-2726 and 37-2730A,
19 Idaho Code, records of psychiatric care or treatment and professional
20 counseling records relating to an individual's condition, diagnosis, care
21 or treatment, provided the provisions of this subsection making records
22 exempt from disclosure shall not apply to the extent that such records or
23 information contained in those records are necessary for a background check
24 on an individual that is required by federal law regulating the sale of
25 firearms, guns or ammunition.

26 (14) Information collected pursuant to the directory of new hires act,
27 chapter 16, title 72, Idaho Code.

28 (15) Personal information contained in motor vehicle and driver records
29 that is exempt from disclosure under the provisions of chapter 2, title 49,
30 Idaho Code.

31 (16) Records of the financial status of prisoners pursuant to
32 subsection (2) of section 20-607, Idaho Code.

33 (17) Records of the Idaho state police or department of correction
34 received or maintained pursuant to section 19-5514, Idaho Code, relating to
35 DNA databases and databanks.

36 (18) Records of the department of health and welfare relating to a
37 survey, resurvey or complaint investigation of a licensed nursing facility
38 shall be exempt from disclosure. Such records shall, however, be subject
39 to disclosure as public records as soon as the facility in question has
40 received the report, and no later than the fourteenth day following the
41 date that department of health and welfare representatives officially exit
42 the facility pursuant to federal regulations. Provided however, that for
43 purposes of confidentiality, no record shall be released under this section
44 which specifically identifies any nursing facility resident.

45 (19) Records and information contained in the registry of immunizations
46 against childhood diseases maintained in the department of health and
47 welfare, including information disseminated to others from the registry by
48 the department of health and welfare.

49 (20) Records of the Idaho housing and finance association (IHFA)
50 relating to the following:

1 (a) Records containing personal financial, family, health or similar
2 personal information submitted to or otherwise obtained by the IHFA;

3 (b) Records submitted to or otherwise obtained by the IHFA with regard
4 to obtaining and servicing mortgage loans and all records relating to
5 the review, approval or rejection by the IHFA of said loans;

6 (c) Mortgage portfolio loan documents;

7 (d) Records of a current or former employee other than the employee's
8 duration of employment with the association, position held and location
9 of employment. This exemption from disclosure does not include the
10 contracts of employment or any remuneration, including reimbursement
11 of expenses, of the executive director, executive officers or
12 commissioners of the association. All other personnel information
13 relating to an association employee or applicant including, but not
14 limited to, information regarding sex, race, marital status, birth
15 date, home address and telephone number, applications, testing and
16 scoring materials, grievances, correspondence, retirement plan
17 information and performance evaluations, shall not be disclosed to
18 the public without the employee's or applicant's written consent.
19 An employee or authorized representative may inspect and copy that
20 employee's personnel records, except for material used to screen and
21 test for employment or material not subject to disclosure elsewhere in
22 the Idaho public records act.

23 (21) Records of the department of health and welfare related to child
24 support services in cases in which there is reasonable evidence of domestic
25 violence, as defined in chapter 63, title 39, Idaho Code, that can be used
26 to locate any individuals in the child support case except in response to a
27 court order.

28 (22) Records of the Idaho state bar lawyer assistance program pursuant
29 to chapter 49, title 54, Idaho Code, unless a participant in the program
30 authorizes the release pursuant to subsection (4) of section 54-4901, Idaho
31 Code.

32 (23) Records and information contained in the trauma registry created
33 by chapter 20, title 57, Idaho Code, together with any reports, analyses and
34 compilations created from such information and records.

35 (24) Records contained in the court files, or other records prepared as
36 part of proceedings for judicial authorization of sterilization procedures
37 pursuant to chapter 39, title 39, Idaho Code.

38 (25) The physical voter registration card on file in the county clerk's
39 office; however, a redacted copy of said card shall be made available
40 consistent with the requirements of this section. Information from the
41 voter registration card maintained in the statewide voter registration
42 database, including age, will be made available except for the voter's
43 driver's license number, date of birth and, upon showing of good cause by
44 the voter to the county clerk in consultation with the county prosecuting
45 attorney, the physical residence address of the voter. For the purposes of
46 this subsection good cause shall include the protection of life and property
47 and protection of victims of domestic violence and similar crimes.

48 (26) File numbers, passwords and information in the files of the health
49 care directive registry maintained by the secretary of state under section
50 39-4515, Idaho Code, are confidential and shall not be disclosed to any

1 person other than to the person who executed the health care directive or the
2 revocation thereof and that person's legal representatives, to the person
3 who registered the health care directive or revocation thereof, and to
4 physicians, hospitals, medical personnel, nursing homes, and other persons
5 who have been granted file number and password access to the documents within
6 that specific file.

7 (27) Records in an address confidentiality program participant's
8 file as provided for in chapter 57, title 19, Idaho Code, other than the
9 address designated by the secretary of state, except under the following
10 circumstances:

11 (a) If requested by a law enforcement agency, to the law enforcement
12 agency; or

13 (b) If directed by a court order, to a person identified in the order.

14 (28) Documents and records related to continuing education and
15 recordkeeping violations that are maintained by the Idaho board of
16 veterinary medicine under the provisions of section 54-2118(1)(b), Idaho
17 Code, provided the requirements set forth therein are met.